



Comptroller General
of the United States

Washington, D.C. 20548

153346

Decision

Matter of: Senate Forwarding, Inc.

File: B-256695

Date: December 8, 1994

DIGESTS

1. A carrier is not liable for the loss of a down vest and a jacket packed with living room items based solely on a member's statement that he owned the items, that he searched the entire house after the carrier finished packing, and that the vest and jacket were not left behind. This explanation does not constitute a sufficient personal rendition of facts surrounding the tender of the items to the carrier to allow us to conclude that the lost items were tendered with living room items.

2. A prima facie case of carrier liability for damage to two clocks is established where the items were delivered in damaged condition, the shipper has claimed that the damage resulted during the shipment, and the damage is consistent with the items having been improperly packed.

DECISION

Senate Forwarding, Inc., requests that we review a part of the settlement of this Office upholding the Air Force's set off of \$222.83 for loss/damage to three items in a shipment of a service member's household goods.¹ The service member claimed that a down vest and a jacket he shipped in a box of living room items were missing and that two clocks he tendered to Senate, a wall clock and a grandfather clock, did not work on delivery. We reverse the settlement as to the down vest and jacket and affirm the settlement as to the clocks.

Regarding the vest and the jacket, the record is devoid of evidence that these items were tendered to the carrier. The shipping inventory did not specifically list these items; the member states they were a part of inventory item #71, identified as living room items.

¹The property was shipped under Personal Property Government Bill of Lading RR-755,928 (MSGT Robert C. Leo) on July 27, 1990.

The only indication of tender here is a preprinted standard statement of loss, signed by the service member, an offer of evidence that is similar to the one we rejected in our decision Aalmode Transportation Corp., B-240350, Dec. 18, 1990. As in Aalmode, the service member here stated in the standard form that he owned the vest and the jacket, that he searched the entire house after the carrier finished packing and that the vest and the jacket were not left behind. These indications do not constitute a sufficient personal rendition of facts surrounding the tender of the vest to the carrier to allow us to conclude that these articles of clothing were tendered with items described as living room items. The living room items were carrier packed. However, the service member has not offered an explanation why he might have expected the vest and the jacket to have been packed with the living room items. Therefore, we reverse our Claims Group settlement as to these items. The carrier is due a refund of \$101.61, for these items.

Regarding the clocks, which had been packed by the carrier, a clock repairer has stated that the damage was caused by improper packing based on the fact that the suspension springs in both clocks were broken. In reply, Senate points out that the repairer observed neither the packing nor the unpacking of the clocks.

Generally, to establish a prima facie case for transit loss/damage against a carrier, the owner must show (1) that he tendered an item to the carrier in a certain condition, (2) that the item was delivered in damaged condition or not at all, and (3) the amount of loss or damage. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964). The burden then shifts to the carrier to show that it is not liable for the loss or damage. Department of the Army, B-255777.2, May 9, 1994.

As stated above, a statement of loss or damage signed by a member is not sufficient by itself to show that the items claimed on the statement were tendered to the carrier. This is so because the best evidence of tender is the inventory of the shipper's household goods prepared by the carrier. Thus, where the inventory fails to list the item claimed, further evidence of tender is required before the burden shifts to the carrier to show that it is not liable for the claimed loss. Paul Arpin Van Lines, Inc., B-205984, June 2, 1982; *affir'd* in B-205984, June 8, 1983.

Here, however, there is no dispute that the two clocks were tendered to the carrier or that they were delivered in damaged condition. Nor is there any dispute as to the amount of the damage. To establish a prima facie case of carrier liability in this case, it only remains to show that the property was tendered to the carrier in good condition and was delivered in damaged condition. We think such a showing has been made here.

The member notified the carrier within the prescribed period of time after delivery of his household goods that the two clocks were damaged. The member then filed a claim directly with the Air Force listing the clocks as having been damaged during the shipment of his household goods. The claim was submitted on a Government form (DD Form 1842) which instructs the claimant of the penalty for making a false claim. In addition, while it is true that the clock repairer did not observe the packing or unpacking of the

clocks, his conclusion that the damage to the clocks (broken suspension springs) was caused by improper packing lends support to the claim that the damage occurred during the shipment.

This case is similar to B-255777.2, *supra*, where we sustained an agency set off against a carrier for internal damage to a video cassette recorder (VCR) based on a letter from the member stating that, to the best of her knowledge, the VCR was functional when tendered to the carrier. The record also contained circumstantial evidence that the damage was caused by the item having been dropped.

While it would have been preferable for the agency to have obtained an explicit statement from this member that his clocks were tendered in good working order, the facts as presented constitute a sufficient basis for us to conclude that the clocks were so tendered. By claiming that his clocks were damaged during the shipment, the member has in effect stated his belief that the clocks were in working order before the shipment. In addition, we have here, as in B-255777.2, circumstantial evidence indicating that the damage occurred during the shipment. We thus conclude that the existing record establishes a prima facie case of carrier liability.

Therefore, the burden of presenting evidence in rebuttal shifts to the carrier. Since the carrier has not shown that it was not responsible for the damage, we affirm the Claims Group denial of the setoff for these items.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel